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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

No. CR A 3026

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellee,

vs.

WILLIAM TURNER AND MARY TURNER,
Defendants and Appellants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Appellate Department of the Superior Court, County of Los Angeles, State of California, entered in this cause.

Opinions Below

The opinion of the Appellate Department of the Superior Court, County of Los Angeles, State of California, is reported in 121 A. C. A. 707, 263 P. 2d 685. A copy of that opinion and of the final judgment of that court in this cause

are attached hereto as Appendix A. The unreported memorandum opinion of the court that tried the cause below (The Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California), along with the latter court's judgment, are attached hereto as Appendix B.

Questions Presented

1. Are the provisions of Sections 16601, 16621 and 16625 of the Education Code of the State of California, as applied to appellants, unconstitutional and void, in that such provisions amount to an arbitrary and unreasonable interference with and in practical effect a prohibition of the appellants' inherent duty and right to provide for and control the education of their children, and deny to such appellants the due process of law guaranteed to them by the due process clause of the 14th Amendment to the United States Constitution?

2. Are the provisions of Sections 16601, 16621 and 16625 of the Education Code of the State of California, as implemented by Sections 226, 228, 231, 236 and 241 of the Administrative Code of the State of California, Title 5, Education, as applied to appellants, unconstitutional and void, in that such provisions amount to an arbitrary and unreasonable interference with and in practical effect a prohibition of the appellants' inherent duty and right to provide for and control the education of their children, and deny to such appellants the due process of law guaranteed to them by the due process clause of the 14th Amendment to the United States Constitution?

3. Are the provisions of Sections 16601, 16621, 16624 and 16625 of the Education Code of the State of California, as applied to appellants, unconstitutional and void, in that such provisions arbitrarily and unreasonably discriminate against parents who would teach their own children at home

by imposing prohibitory teaching requirements upon such parents while making no such requirements of teachers in exempted private schools, and deny to appellants that equality before the law which is guaranteed to them by the equal protection of the laws clause of the 14th Amendment to the United States Constitution?

4. Are the provisions of Sections 16601, 16621, 16624 and 16625 of the Education Code of the State of California, as implemented by Sections 226, 228, 231, 236 and 241 of the Administrative Code of the State of California, Title 5, Education, and Form No. 41-15 of the Credentials Office of the Department of Education of the State of California, as applied to appellants, unconstitutional and void, in that such provisions arbitrarily and unreasonably discriminate against parents who would teach their own children at home by imposing prohibitory teaching requirements upon such parents while making no such requirements of teachers in exempted private schools, and deny to appellants that equality before the law which is guaranteed to them by the equal protection of the laws clause of the 14th Amendment to the United States Constitution?

Statutes Involved

Sections 16601, 16621, 16624 and 16625 of the Education Code of the State of California (Calif. Stats. 1943, ch. 71, secs. 16601, 16621, 16624 and 16625); Sections 226, 228, 231, 236 and 241 of the Administrative Code of the State of California, Title 5, Education; and Form No. 41-15 of the Credentials Office of the Department of Education of the State of California are set out in Appendix C hereto.

Statement

Appellants, husband and wife, are the parents of seven children, three of them of school age. None of appellants'

children attend a public school but, instead, are taught at home in the manner described in the second paragraph next below.

On December 18, 1952 a complaint was issued against each appellant, charging each of them in three counts (one count for each child of school age) with a violation of Section 16601 of the California Education Code in that said appellants were the parents having control and charge of three children between the ages of 8 and 16 years, to wit, Mariel Turner, aged 14, Mary N. Turner, aged 10, and William V. Turner, aged 9; that each of said children resided at 11933 Jefferson Boulevard in the City of Los Angeles, and that said appellants did wilfully and unlawfully fail, refuse and neglect to send each of said children to the public full-time day school for the full time for which the public schools of the city and school district in which each of said children resided were in session.

Appellants came on for trial on February 6, 1953 in the Municipal Court of Los Angeles Judicial District. The evidence developed at the trial showed that the children were being educated by appellant Mary Turner in a competent, systematic and effective manner. It showed that Mary Turner was a person capable of teaching (Tr. 28, 29); that she was teaching the children in the English language (Tr. 35, lines 10-12); that she was instructing them in the several branches of study required to be taught in the public schools of the state (Tr. 36, lines 2-13; Tr. 72, lines 17-20); that an attendance record was available indicating each absence from school (Tr. 35, lines 13-17); and that she was teaching the children five days a week from 1:00 to 4:00 each afternoon for not less than 170 days a year (Tr. 35, lines 18-23; Tr. 65, lines 4-17; Tr. 68, lines 11-13; Tr. 73, line 22 to Tr. 74, line 12). The testimony of Mariel Turner, aged 14, one of appellants' daughters, so instructed by

appellant Mary Turner, demonstrated very strikingly the effectiveness of that instruction. Mariel had received all of her instruction during the last four years from the appellants (Tr. 30, lines 5-9, Tr. 73, lines 9-17). In an achievement test given by the California Testing Bureau in Hollywood just before the trial (Tr. Ex. A), Mariel far excelled the average 14-year-old in her knowledge of the tested subjects. The average student of that age would receive a ninth grade rating: Mariel's lowest score in this achievement test was 11th grade, ranging from there up to senior college grade, with an average of about sophomore college level.

The testimony established a purposeful intention and successful effort to provide for the children a complete and full education, at least equal to that provided in the public schools. The testimony is uncontradicted that the subjects taught included English grammar, reading, writing, arithmetic, language (Tr., P. 36, L. 2-26), mathematics, geography, science (Tr., P. 71, L. 2-4, L. 11-17), early American history, American history, civics, algebra (Tr., P. 74, L. 17-26), English literature, composition (Tr.., P. 75, L. 1-5), ancient history, medieval history, algebra, biology (Tr., P. 79, L. 3-5), physical education (Tr., P. 80, L. 11-21, zoology, art (Tr., P. 81, L. 8-10).

The testimony further established that the children had adequate opportunities to play at home and in the neighborhood with other children (Tr., P. 78, L. 7-25) and that appellants were training the children for healthful living and in morals and manners (Tr., P. 59-61).

The trial court rendered a memorandum opinion on February 25, 1953, holding each of the appellants guilty as charged. Each appellant was sentenced to pay a fine of $10.00 on each of three counts.

Appellants on March 17, 1953, filed their Statement on Appeal with the trial court, and carried the case to the

Appellate Department of the Superior Court, County of Los Angeles, State of California.

The case was argued before such Appellate Department on June 4, 1953. On September 15, 1953, such court on its own motion issued its order vacating submission and restoring the case to the calendar for further argument. Further argument was had on October 15, 1953.

On November 24, 1953, the Appellate Department handed down its decision, affirming the judgment of the trial court. This final action and decision of the Appellate Department of the Superior Court, which is herein sought to be reviewed, consisted of the opinion and judgment reproduced in Appendix A attached hereto.

Jurisdiction

The decision of the Appellate Department of the Superior Court, County of Los Angeles, State of California, was rendered on November 24, 1953. In that decision the Appellate Department affirmed appellants' conviction in the court below for violation of certain provisions of the California Education Code and upheld the validity of relevant provisions of that code and of administrative regulations issued thereunder, as against appellants' contention that such statutory and administrative regulations, as applied to appellants, were repugnant to the Constitution of the United States. A petition for appeal is presented to such Appellate Department of the Superior Court herewith, to-wit, on February 16, 1953. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1257 (2), 2101 (c), 2101 (d) and Rule 38½ of the Supreme Court. The following decisions sustain the jurisdiction of the Supreme Court to review the decision on direct appeal in this case: *King Mfg. Co.* v. *City Council*

of Augusta (1928) 277 U. S. 110, 48 S. Ct. 489, 72 L. ed. 801; *Meyer* v. *State of Nebraska* (1923) 262 U. S. 390, 43 S. Ct. 625, 67 L. ed. 1042, 29 A. L. R. 1446; *Hamilton* v. *Regents of University of California* (1934) 293 U. S. 245, 55 S. Ct. 197, 79 L. ed. 343.

The Appellate Department of the Superior Court, County of Los Angeles, State of California, is the highest court in the State of California in which this cause could be determined. Article VI, Sec. 5, California Constitution, 2 Cal. Const. A p. 1; C. C. P. 77b (Stats. 1929, p. 836; Am. Stats. 1951, Ch. 1737, Sec. 3); *In re Wiegand* (1939) 27 Fed. Supp. 725; *Buck* v. *People of the State of California* (1952) 343 U. S. 99, 72 S. Ct. 502, 96 L. ed. 775.

The constitutional questions were first raised in this cause in the defendants' Statement on Appeal on appealing from the judgment of the trial court (The Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California) to the Appellate Department of the Superior Court, County of Los Angeles, State of California. Such Statement on Appeal reads in part as follows:

• • • • • • •

"2. If the complaint and each count thereof is construed to state facts constituting a public offense, then the offense so charged is no crime because any statute so providing is in contraconvention of the Constitution of the United States and the Constitution of the State of California and particularly the XIV Amendment of the United States Constitution and Article I, Section 13 of the Constitution of California.

• • • • • • •

"7. Because the children of appellants are being instructed in study and recitation for at least three hours a day for 170 days each calendar year by appellant Mary Turner, a person capable of teaching, and said children are being instructed in the several branches of

study required to be taught in the public schools of the State of California and in the English language, appellants meet all of the requirements of Education Code Sections 16601 and 16625 and are, therefore, exempted persons within the meaning of said statutes and any purported requirement of Education Code Section 16625 that appellants or either of them shall hold a valid State credential for each grade taught results in a violation of the provisions of the United States Constitution and of the provisions of the Constitution of the State of California and more particularly the provisions of the XIV Amendment of the United States Constitution and Article I, Section 13 of the Constitution of California.

• • • • • • •

"9. Education Code Section 16625 in its requirement that the tutor or other person shall hold a valid State credential for the grade taught, in view of the provisions of Education Code Section 16624 which do not require a person teaching in a private school to hold a valid State credential, results in a violation of the equal protection of the laws clause of the United States Constitution.

• • • • • • •

"11. If Education Code Section 16625 is applied to appellants in this case to require appellants or either of them to have a valid State credential for each grade taught appellants' children, such a requirement is so onerous and burdensome that it violates the due process of law requirement and provisions of the United States Constitution and also the due process of law provision of the Constitution of California and to apply such provision to appellants results in an unconstitutional application of said statute."

The general grounds thus set out in appellants' Statement on Appeal, asking reversal of the trial court's judgment on the ground that appellants' conviction violated

rights guaranteed to them by the Constitution of the United States, were particularized and discussed at length in appellants' brief submitted to the Appellate Department of the Superior Court. Such brief was devoted almost wholly to the federal constitutional questions involved in the case. Respondent in turn devoted a substantial portion of its brief to those questions, and appellants in their reply brief reasserted their contention that the contested provisions of the California Education Code denied to appellants the liberty to provide for and control the education of their children which is protected by the due process clause of the 14th Amendment to the United States Constitution against impairment by state action; and that the burdensome restrictions laid upon instruction in the home, when compared with the lighter burdens imposed on other agencies of private instruction, denied to appellants the equal protection of the laws which the 14th Amendment to the United States Constitution guaranties as against state action.

These contentions were subsequently argued orally before the Appellate Department of the Superior Court and duly considered by the Court, as evidenced by its opinion of November 24, 1953, and were expressly rejected. In the words of that opinion, at page 3:

> "Defendants' main contention, however, is that the statute in question is unconstitutional in that it deprives parents of the right to determine how and where their children may be educated."

After referring to *Pierce* v. *Society of the Sisters* (1925) 268 U. S. 510, 45 S. Ct. 571, 69 L. ed. 1070, 39 A. L. R. 468, and briefly discussing the California statute, the Appellate Department opinion continues, on pages 3-4:

> "We see no basis therefore upon which to predicate a holding of unconstitutionality unless such a holding is compelled because the statute denies the right of

parents to educate their children unless such parents possess the qualifications prescribed therein. Contrary to the contention of the defendants, we see nothing in the *Pierce* case so declaring or intimating. On the contrary, Mr. Justice McReynolds, the author of the opinion in that case, was at pains to observe (268 U. S. 534, 69 L. ed. 1077, 39 A. L. R. 475): 'No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers, and pupils; *to require that all children of proper age attend some school,* that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.' " (Emphasis added by Appellate Department)

The Appellate Department then proceeds to quote at length from *State* v. *Hoyt* (1929) 84 New Hampshire 38, 146 At. 170; its initial quotation being that portion of the New Hampshire court's opinion that states that the *Pierce* case does not prevent the states from wholly outlawing instruction in the home as a substitute for instruction in a public school or an approved private school.

In response to appellants' objection that heavier burdens were placed on them than on teachers in other private institutions of learning, resulting in a denial to appellants of the equal protection of the laws guaranteed to them by the 14th Amendment to the United States Constitution, the Appellate Department answered, at page 6 of its opinion:

"If, as we have seen, the state might have refused to grant an exemption in the case of children being instructed at home by their parents or a private tutor without rendering the statute vulnerable to the charge of unconstitutionality, we see no reason why objection can be raised to a statute which, while granting an exemption in such cases, conditions the same by requiring such parents or tutors to possess certain qualifications

even if those be stricter than those required of teachers in private schools."

And, anyway, added the court, there is a reasonable basis for the classification (page 6).

The question of conflict with the United States Constitution having been considered by the state court of last resort and its decision having been in favor of the state statutes' validity, the Supreme Court has jurisdiction on appeal. *Edwards* v. *Elliott* (1874) 21 W11. 532, 551, 22 L. ed. 487; *Columbia Water-Power Co.* v. *Columbia Electric St. Ry. Light & Power Co.* (1899) 172 U. S. 475, 488-489, 19 S. Ct. 247, 43 L. ed. 521; *Saltonstall* v. *Saltonstall* (1928) 276 U. S. 260, 267, 48 S. Ct. 225, 72 L. ed. 565; *People of State of New York ex rel. Bryant* v. *Zimmerman* (1928) 278 U. S. 63, 68-69, 49 S. Ct. 61, 73 L. Ed. 184, 62 A. L. R. 785; *Charleston Federal Savings & Loan Assoc.* v. *Alderson* (1945) 324 U. S. 182, 185-186, 65 S. Ct. 624, 89 L. ed. 857.

The Questions Are Substantial

The basic issue presented in this case is whether it is within the competence of a state to enact legislation which directly, or in practical effect, denies to parents the right to educate their children at home in lieu of attendance at a public school or at an approved private school.

Appellants contend that they have a constitutional right to give such home instruction. Respondent denies that any such right exists and asserts that instruction at home in lieu of instruction in public schools or in private institutions of learning other than the home is a privilege which the state may deny at will.

Both appellants and respondent place their main reliance on the decision of the Supreme Court in *Pierce* v. *Society of the Sisters* (1925) 268 U. S. 510, 45 S. Ct. 571, 69 L. ed. 1070, 39 A. L. R. 468. Appellants contend that decision recognizes the parents' inherent right under the common

law to provide for and control the education of their children, and that the right so defined by the common law furnishes the measure of the liberty which is protected by the due process clause of the 14th Amendment against undue impairment by state action. Appellants contend further that the *Pierce* case and *Meyer* v. *State of Nebraska* (1923) 262 U. S. 390, 43 S. Ct. 625, 67 L. ed. 1042, 29 A. L. R. 1446, illustrate and give full recognition to this right by striking down the offending state statutes there involved; but that these decisions do not attempt to, and do not, mark the outermost limits of the parents' right to provide for and control the education of their children. The full measure of that right must be determined by reference to their common law rights of parental control in matters of education.

Respondents contend, on the other hand, that the right to give instruction in the home in lieu of instruction in public schools or in private institutions of learning other than the home has been decided adversely by certain language employed in the *Pierce* case (at page 534) to the effect that: "No question is raised concerning the power of the state . . . to require that all children of proper age attend some school . . . ," and the statement in the *Meyer* case (at page 402) that: "The power of the state to compel attendance at some school . . . is not questioned."

The Appellate Department of the Superior Court, in its opinion in this cause on November 24, 1953, adopted the respondent's interpretation of the *Pierce* case and affirmed appellants' conviction.

It is submitted that the language quoted from the *Pierce* and *Meyer* cases in the second paragraph next above means merely that the points there mentioned were not before the Court for decision and were not passed on. If Justice McReynolds, who wrote the Court's opinion in each case,

had intended to say that a state had an undoubted power to do these things, it is reasonable to assume that he would have said: "No question *can be* raised concerning the power of the state," etc., and that: "The power of the state to compel attendance at some school . . . *can not* be questioned." That the Court did not intend to pass upon those questions is shown by the explicit statement in the *Meyer* case (at page 402) to the effect that: "Those matters are not within the present controversy." Nor were they within the controversy in the *Pierce* case. As a matter of fact the Oregon statute which was declared invalid in the *Pierce* case, and the text of which is set out in a footnote to the opinion in that case, expressly exempted home instruction by a parent or private teacher. Section 5259 (d).

The basic philosophy of these two cases, instead of giving the states unlimited power over instruction by parents in the home, denies any power in the states to restrict the education of children to public schools and private institutions of instruction other than the home.

1. The inherent duty and right of parents to provide for and control the education of their children antedates the creation of a system of free public schools, since the school system as we know it today dates from about 1850 only. *Encyclopedia Britannica* (1953) Vol. 7, page 982. The breadth of the parents' right at common law is well illustrated by cases such as *Commonwealth* v. *Armstrong* (1842) 1 Clark (Pa.) 146, 148; *School Board District No. 18* v. *Thompson* (1909) 24 Okl. 1, 3-4, 9, 103 Pac. 578, 24 L. R. A. (NS) 221, 138 Am. St. Rep. 861, 19 Ann. Cas. 1188; *Hardwick* v. *Board of School Trustees* (1921) 54 Cal. App. 696, 205 Pac. 49; and *State ex rel. Kelley* v. *Fergusen* (1914) 95 Neb. 63, 144 N. W. 1039, 50 L. R. A. (NS) 266.

2. This right of the parents to provide for and control the education of their children is one of the inalienable

rights endowed upon them by their Creator. As stated in Encyclical Letter of Pope Pius XI on *Christian Education of Youth*, "Five Great Encyclicals", Sixth Printing-1942, The Paulist Press:

> "The family therefore holds directly from the Creator the mission and hence the right to educate the offspring, a right inalienable because inseparably joined to the strict obligation, a right anterior to any right whatever of civil society and of the State, and therefore inviolable on the part of any power on earth. (P. 45) . . . Accordingly, unjust and unlawful is any monopoly, educational or scholastic, which physically or morally, forces families to make use of government schools, contrary to the dictates of their Christian conscience, or contrary even to their legitimate preferences." (P. 49)

The United States of America is a religious nation and the Christian religion is a part of the common law of the several states. *The Church of the Holy Trinity* v. *U. S.* (1892) 143 U. S. 457, 36 L. ed. 226, 12 S. Ct. 511.

3. The rights which flow from the parents' common law and God-given duty and right to give their children an education suitable to their station in life are a part of the liberty which is protected by the due process clause of the 14th Amendment to the United States Constitution. *Meyer* v. *State of Nebraska*, 262 U. S. 390, 400; and *Pierce* v. *Society of the Sisters*, 268 U. S. 510, 534-535.

4. The state's proper concern is that the child shall be educated, not that he be educated in any particular manner or place. *People* v. *Levisen* (1950) 404 Ill. 574, 576-577, 90 N. E. (2d) 213; *Commonwealth* v. *Roberts* (1893) 159 Mass. 372, 374, 34 N. E. 402.

5. Complete prohibition of home instruction constitutes an arbitrary interference with the parents' constitutional right to provide for and control the education of their chil-

dren. *Meyer* v. *State of Nebraska*, 262 U. S. 390; *Pierce* v. *Society of the Sisters*, 268 U. S. 510; and the state cases cited under point 1, *supra*, concerning the parents' common law right to control the education of their children.

6. A statute which purports merely to regulate the giving of instruction in the home but which in practical effect operates as a denial of the parents' right to give such instruction to their children, must be regarded as a statute of prohibition, not of regulation, and its validity must be tested by the state's power to outlaw wholly the activity so prohibited. *Adams* v. *Tanner* (1917) 244 U. S. 590, 592, 37 S. Ct. 662, 61 L. ed. 1336, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973.

7. Sections 16601, 16621, 16624 and 16625 of the California Education Code, as implemented by Sections 226, 228, 231, 236 and 241 of the Administrative Code of the State of California, Title 5, Education, and Form No. 41-15 of the Credentials Office of the Department of Education of the State of California, in practical effect work a complete denial of the parents' right to provide competent home instruction in lieu of attendance elsewhere by their children.

Section 16601 of the California Education Code requires the parents of any child between the ages of eight and 16 years, not exempted under the provisions of the statute, to send the child to the public full-time day school of the city, etc., in which the child resides. Section 16621 provides that the classes of children described in the statute shall be exempted from the requirements of attendance upon a public full-time day school. Exemptions are set out in six sections: two of them being 16624 and 16625. Section 16624 exempts children who are being instructed in a private full-time day school by "persons capable of teaching." This section provides that the school shall be taught in the English language, shall offer instruction in the several branches

of study required to be taught in the public schools of the state, and that an attendance record shall be kept. Section 16625 provides that:

> "Children not attending a private full-time day school, and who are being instructed in study and recitation for at least three hours a day for 170 days each calendar year by a private tutor or other person, in the several branches of study required to be taught in the public schools of this State and in the English language shall be exempted. The tutor or other person shall hold a valid State credential for the grade taught. The instruction shall be offered between the hours of 8 o'clock a.m. and 4 o'clock p.m."

In order to get the state credential required by Section 16625 a mother who wishes to teach her children kindergarten subjects or the subjects taught in the first three grades in school must meet the following minimum requirements, as set out in Section 226 of the California Administrative Code, Title 5, Education:

(a) A four-year college course with a bachelor's degree.

(b) A minimum of twenty-four semester hours of professional work in education, affording adequate preparation for teaching the statutory school subjects required to be taught in the first three grades. This work shall include:

(1) Eight semester hours of kindergarten-primary courses, including:

> A. Six semester hours of course work in kindergarten, primary, or kindergarten-primary methods, curriculum, or principles, including a course covering each of the two levels.
>
> B. Two semester hours of child psychology or child growth and development.

(2) Eight semester hours of directed teaching. At least one-half of this requirement shall be completed on the

kindergarten—primary level. Successful teaching experience on the kindergarten-primary level in public schools or private schools of equivalent status may be substituted for the directed teaching at the rate of one year of full time teaching for one-half of the requirement.

(3) Other appropriate professional courses in education.

(c) The completion of a two semester hour course or the passing of an examination on the provisions and principles of the Constitution of the United States. This provision may be met by either:

(1) Completing a course in any recognized college or university from which undergraduate credits are accepted by the State Board of Education, or

(2) Passing an examination given by a California junior college, college, or university.

Her application for credentials must be accompanied by:

(a) a notarized application (Form No. 41-4 Rev.);
(b) a health certificate (Form No. 41-3) signed by a physician licensed by any state to practice medicine and surgery;
(c) a fee of $4.00 in the form of a money order or certified check;
(d) original letters verifying the last two years of teaching experience, if any;
(e) official transcripts of record listing all college and university courses completed.

Similarly detailed and burdensome requirements are imposed for teaching credentials covering other grades. Sections 231, 236 and 241 of the California Administrative Code, Title 5, Education.

The certificate for a kindergarten-primary credential must be renewed at the end of two years after its first issuance and thereafter may be renewed for five-year periods upon verification of either "(a) Six semester hours

of upper division or graduate work within the past five years, or (b) A minimum of five months of successful school experience within the past five years." Section 228 of the California Administrative Code, Title 5, Education.

Similar provisions are made for the renewal of credentials for teaching in other grades. Sections 231, 236 and 241 of the California Administrative Code, Title 5, Education.

8. The rigors of regulation, moreover, are applied with an unequal hand. Form No. 41-15 of the Credentials Office of the California Department of Education, reflecting the different standards imposed by Section 16624 on teachers in "private schools" and by Section 16625 on parents who would instruct their children in their own homes, provides in paragraph 15 that:

> "Credentials are not required for teaching in four year colleges or universities, nor for teaching in private elementary and secondary schools."

To subject parents to stricter standards than are imposed on persons who make a profession of teaching in those private schools that are held to come under Section 16624 constitutes an unreasonable discrimination against such parents and denies them that equality of treatment by state agencies that is guaranteed to them by the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

As the statute stands, appellants are completely free to establish a "school", for profit or otherwise, for the education of their neighbors' children, but not for their own.

Arbitrary selection cannot be justified by calling it classification. *Gulf, C. & S. F. Ry. Co.* v. *Ellis* (1897), 165 U. S. 150, 17 S. Ct. 255, 41 L. ed. 666.

It is submitted that the Appellate Department of the Superior Court has interpreted *Pierce* v. *Society of the Sisters*, 268 U. S. 510, in such a way as to unduly restrict the

parents' right to educate their children in their own home in lieu of education elsewhere, and that as a consequence of such misconstruction that court has upheld the validity of the contested provisions of the California Education Code and affirmed appellants' conviction in the trial court. We believe that the questions presented by this appeal are substantial and that they involve principles of public importance.

Respectfully submitted,

JAMES C. INGEBRETSEN,
Counsel for appellants.

APPENDIX "A"

Opinion

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Superior Court No. CR A 3026

Trial Court No. 12,075

PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent*

vs.

WILLIAM TURNER and MARY TURNER, *Defendants and Appellant*

OPINION

Appeal by defendants from a judgment and orders of the Municipal Court of the Los Angeles Judicial District, Roger Alton Pfaff, Judge. Judgment and order denying motion for new trial affirmed. Appeals from other orders dismissed.

For Appellants: James C. Ingebretsen, Esq.

For Respondent: Ray L. Chesebro, City Attorney; Donald M. Redwine, Assistant City Attorney; Dan J. Whiteside, Deputy City Attorney.

Defendants were convicted of violating section 16601 of the Education Code in that they neglected and refused to send their three children to a public school, and each was sentenced to pay a fine of $10.00 on each of three counts. The section in question reads as follows: "Each parent, guardian, or other person having control or charge of any child between the ages of eight and 16 years, not exempted under the provisions of this chapter, shall send the child to the public full-time day school for the full time for which the public schools of the city, city and county, or school district in which the child resides are in session."

Section 16621 of the same code provides: "The classes of children described in this article shall be exempted by the proper school authorities from the requirements of attendance upon a public full-time day school." And this in turn is followed by six sections specifying the persons exempted from the provisions of Section 16601, with only two of which we are concerned, i.e., 16624 and 16625, which read as follows: "16624. Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the State. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year." "16625. Children not attending a private full-time day school, and who are being instructed in study and recitation for at least three hours a day for 170 days each calendar year by a private tutor or other person, in the several branches of study required to be taught in the public schools of this State and in the English language shall be exempted. The tutor or other person shall hold a valid State credential for the grade taught. The instruction shall be offered between the hours of 8 o'clock a. m. and 4 o'clock p. m."

Defendants first contend that the complaint here does not charge a public offense for the reason that it does not allege that the children were not within any of the classes exempted from the requirement of attendance at public school by the provisions of sections 16622 to 16627. We do not agree. As said by this court in *People* v. *Fowler*, 32 Cal. App. 2d (Supp.) 737, 742, the general rule is that "it is not necessary in a criminal charge to negative an exception or proviso which is not a part of the definition or description of the offense. (Citing cases.) Of every complaint which does not negative such a proviso or exception, it is possible to say (as do the defendants here) that all the facts alleged in it may be true and still the defendant may be entirely innocent of crime. But such complaints are,

nevertheless, held sufficient by the authorities just referred to and many others which could be cited." Here the exemptions from, or exceptions to, section 16601, found in the subsequent sections to which reference has been made, do not constitute part of the definition or description of the offense, which is the failure of parents to send their children to a public school.

Defendants' main contention, however, is that the statute in question is unconstitutional in that it deprives parents of the right to determine how and where their children may be educated. There can be no doubt that if the statute, without qualification or exception, required parents to place their children in public schools, it would be unconstitutional. (*Pierce* v. *Society of Sisters* (1925), 268 U. S. 510, 69 L. ed. 1070, 39 A. L. R. 468.) The statute here, however, unlike that involved in the case cited, does not so provide. It recognizes the right of parents not to place their children in public schools if they elect to have them educated in a private school or through the medium of a private tutor or other person possessing certain specified qualifications. We see no basis therefore upon which to predicate a holding of unconstitutionality unless such a holding is compelled because the statute denies the right of parents to educate their children unless such parents possess the qualifications prescribed therein. Contrary to the contention of the defendants, we see nothing in the *Pierce* case so declaring or intimating. On the contrary, Mr. Justice McReynolds, the author of the opinion in that case, was at pains to observe (268 U. S. 534, 69 L. ed. 1077, 39 A. L. R. 475): "No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers, and pupils; *to require that all children of proper age attend some school,* that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." [Emphasis added.]

The question here, therefore, may be narrowed down as to whether or not it is within the competency of the State to require parents to place their children in public schools or,

in the alternative, a private school meeting certain prescribed conditions, or that the children be instructed by a private tutor or other person possessing qualifications and in the manner prescribed by section 16625. We believe that the answer must be in the affirmative. Without unduly extending this opinion by a detailed reference to the many cases dealing with statutes of this character, most of which are collated in the annotations in 14 A. L. R. 2d 1364, 39 A. L. R. 477, 41 L. R. A. (N. S.) 95, we think the reasons for this conclusion are well stated in *State* v. *Hoyt* (1929), 84 New Hampshire 38, 146 Atl. 170, where the court upheld the constitutionality of a statute which required that children be educated either in a public school or an approved private school. In rejecting the claim that the statute was invalid in so far as it prohibited instruction in the home by the parents or a private tutor, the court, after quoting the language of Mr. Justice McReynolds, in *Pierce* v. *Society*, set forth above, says (146 Atl. 171): "The defendants' claim that the federal guaranty of liberty enables them to set at defiance any attempt of the state to prescribe the means for ascertaining the sufficiency of educational facilities furnished and to be furnished as a substitute for the public school, goes far beyond anything that has been decided to be the law. The declaration in Pierce v. Society, 268 U. S. 510, 534, 45 S. Ct. 571, 573 (69 L. Ed. 1070, 39 A. L. R. 468), that 'no question is raised' as to certain matters, is understood to mean, or at least to suggest, that power relating thereto remains in the state. In any event, it must mean that lack of such power is neither declared, nor indicated.

"The matters so enumerated include all that are involved in this litigation. The power 'reasonably to regulate,' to require attendance, good character of teachers, studies to be taught, and those to be prohibited, all look to laying down rules for future conduct. As the statute does not exceed the exercise of these powers, it is held to be constitutional.

"In the adjustment of the parent's right to choose the manner of his children's education, and the impinging right of the state to insist that certain education be furnished and supervised, the rule of reasonable conduct upon the part

of each towards the other is to be applied. The state must bear the burden of reasonable supervision, and the parent must offer educational facilities which do not require unreasonable supervision.

"If the parent undertakes to make use of units of education so small, or facilities of such doubtful quality, that supervision thereof would impose an unreasonable burden upon the state, he offends against the reasonable provisions for schools which can be supervised without unreasonable expense. The state may require, not only that educational facilities be supplied, but also that they be so supplied that the facts in relation thereto can be ascertained, and proper direction thereof maintained, without unreasonable cost to the state. Anything less than this would take from the state all-efficient authority to regulate the education of the prospective voting population."

It is not without significance that, although it has been said that "only eleven of the forty-eight states permit by statute that instruction may be given at home by their parent or tutor," and "such home instruction moreover is specifically conditioned except in two states" (Parental Right in Educational Law, Loughery, Catholic University of America Press, 1952) we have been unable to find a single case in which it has been held that so-called compulsory attendance statutes are rendered unconstitutional and void merely by reason of a failure to recognize home instruction as an alternative to attendance in the public schools.

Nor do we see any merit in the claim of defendants that the statute under consideration is unreasonable or arbitrary in that, while exempting private schools, it does not require teachers therein to "hold a valid state credential for the grade taught," but a private tutor or other person in order to be exempted under section 16625 must possess such a certificate. If, as we have seen, the state might have refused to grant an exemption in the case of children being instructed at home by their parents or a private tutor without rendering the statute vulnerable to the charge of un-

constitutionality, we see no reason why objection can be raised to a statute which, while granting an exemption in such cases, conditions the same by requiring such parents or tutors to possess certain qualifications even if these be stricter than those required of teachers in private schools. In the light of this, defendants may not be heard to assert that they have been discriminated against because the legislature conditioned the exemption granted to private instruction outside of a public or private school by requiring persons so undertaking to teach outside of such schools to possess qualifications different from those prescribed for teachers in private schools. Were it otherwise, however, it may not be said that there is not a reasonable basis for the distinction in question. The most obvious reason for such difference in treatment is that pointed out in *Hoyt* v. *State, supra,* namely, the difficulty in supervising without unreasonable expense a host of individuals, widely scattered, who might undertake to instruct individual children in their homes as compared with the less difficult and expensive supervision of teachers in organized private schools. Also the legislature might reasonably have concluded that teachers in private schools would be under direct supervision of their school authorities at all times, and that the interests of the persons conducting the same would compel the maintenance of the required standard of instruction by competent instructors for otherwise the school would fail to qualify for the exemption granted thereby, and without pupils it could not continue to exist.

We likewise fail to find any merit in defendants' claim that they come within the classification of a "private school" within the meaning of section 16624 and hence are exempted from the operation of the statute. The contrary was held in *State* v. *Counort* (1912), 69 Wash. 361, 124 Pac. 910, 911, 41 L. R. A. (N. S.) 95; *State* v. *Will* (1916), 99 Kas.

167, 160 Pac. 1025; *State* v. *Hoyt, supra.* Moreover, a mere reading of sections 16624 and 16625 clearly indicates that the legislature intended to distinguish between private schools, upon the one hand, and home instruction by a private tutor or other person, on the other. If a "private school" as that term is used in section 16624 necessarily comprehends a parent or private tutor instructing at home, there was no necessity to make specific provision exempting the latter. We are not unmindful of the fact that a different conclusion was reached in *People* v. *Levisen* (Ill.), 90 N.E. 2d 213, 14 A. L. R. 2d 1364. The statute there, however, unlike our own, while exempting private and parochial schools, did not grant such exemption to instruction at home or by private tutor. Thus it did not upon its face indicate a legislative intent to distinguish between the two. Aside from this, the opinion is far from persuasive. In a thoughtful article discussing this case, in 18 University of Chicago Law Review, page 105, it is said: "The majority's construction of the statute is unsupported not only by ordinary connotations of the term 'private school' but also by the legislative history of the compulsory attendance law. The original act did provide for home instruction, but subsequent amendments clearly indicate an intent to repeal this exception to the public school attendance provision."

For like reasons, we find ourselves unable to agree with the similar holding in *State* v. *Peterman* (1904), 32 Ind. App. 665, 70 N. E. 550, upon which the holding in the *Levisen* case is predicated.

Thus we are brought to the final contention of the defendants that inasmuch as they claim that the instruction given to their children is as good or better than that obtainable in a public or private school or through the medium of a person possessing the qualifications set forth in section

16625, the purpose of the statute, which is said to be simply to require an adequate education and not one conducted in a particular manner or place, has been fully satisfied. The complete answer to this is also to be found in the *Hoyt* case, from which we again take the liberty of quoting (p. 172): "The claim is that furnishing equivalent book-learning is an answer to a charge of failing to cause a child to attend school. The statute makes no such exception to the duty imposed. The only substitute for the public school is an approved private school. P. L. c. 118, sec. 1.

"If the defendants' allegations that 'said child was taught by a private tutor in his own home' could be construed to set forth attendance at a private school (see State v. Counort, 69 Wash. 361, 124 P. 910, 41 L. R. A. (N. S.) 95), there is no allegation that the enterprise has been designated as a private school 'to be treated as approved within the meaning of this title.' P. L. c. 116, sec. 11, par. XXVIII. Not having been approved as required by the statute, it is not 'an approved private school.' P. L. c. 118, sec. 1.

"Decisions from other jurisdictions, which are based upon statutes making the attainment of certain proficiency by the child, or furnishing a certain amount of instruction, an excuse for nonattendance at the public school (Commonwealth v. Roberts, 159 Mass. 372, 34 N. E. 402; Bevan v. Shears (1911) 2 K. B. 936), are not applicable here, because our statute makes no such exception. . . .

"Varying the statement a little, the argument is advanced that the only object of the statute is to compel a certain amount of proper instruction and study, and that proof thereof is an answer to the charge in any event. This claim fails to take into account the true nature of the charge. While the ultimate object of the statute is the education of the child, means to assure the attainment of that end may be adopted by the state, and may be enforced by the imposition of penalties for violating the regulations made. As stated earlier in this opinion, the state is entitled to establish a system whereby it can be known, by reasonable means, that the required teaching is being done."

The judgment and order denying motion for a new trial are affirmed. The appeals from the other orders are dismissed.

Dated Nov. 24, 1953.

We concur.

PATROSSO,
Judge.

SHAW,
Presiding Judge.

BISHOP,
Judge.

APPENDIX "B"

IN THE MUNICIPAL COURT, LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Mun. Ct. Case No. 12075

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

WILLIAM TURNER AND MARY TURNER, Defendants.

MEMORANDUM OPINION

For the Plaintiff: Fulton W. Haight, Deputy City Attorney.

For the Defendants: Milo V. Olson, Attorney at Law.

Defendants are charged in three counts with refusal to comply with Section 16601, California Education Code, which reads as follows:

"Each parent, guardian, or other person having control or charge of any child between the ages of eight and 16 years, not exempted under the provisions of this chapter, shall send the child to the public full-time day school for the full time for which the public schools of the city, city and county, or school district in which the child resides are in session."

The defendants claim exemption under Section 16624, which reads as follows:

"Children who are being instructed in a private full-time day school by persons capable of teaching shall be

exempted. Such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the State. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year."

The facts in brief are as follows: Defendants, husband and wife, are the parents of seven children, three of school age and subject to the provisions of Section 16601.

The family live in a small flat, consisting of a combination living and bedroom, with a small kitchen, dressing room and bathroom. The father and seven children sleep in the combination living and bedroom; the mother sleeps in a trailer at the rear of the building.

The living habits of the family are somewhat unusual. The father arises at 7 a.m. and returns from his work in the evening. The mother retires at 3 a.m. and sleeps until noon each day. The eldest daughter Muriel has charge of the younger children during the morning hours.

The children study from books, selected by their mother, during the morning and have classes each afternoon between the hours of 1 and 4, the instruction being given by the mother.

Mrs. Turner testified she had two years' college training, consisting principally of liberal arts courses. She possesses no teacher's credentials or other accreditation but has taught dancing and devotes some time to photography. The father is an engineer, with a degree from Rhode Island State College. Mrs. Turner testified she preferred teaching her own children to sending them to the public schools, the teaching methods of which she disapproved, although at one time in the past the daughter Muriel had attended public school. She testified she employs a new educational theory of teaching which is, in her words, to "take one main subject and a secondary subject, which you might call a rest subject so it won't tire the children on one subject too much, and I keep with that until they get to a certain level and I feel that perhaps they are get-

ting a little stale, and then I go on to another subject and after a while come back to the first one."

Muriel testified that she had been instructed in a number of subjects, including English, mathematics, history and some instruction in biology and botany. An aptitude test which was introduced into evidence, taken shortly before the trial of the case, indicated that Muriel possessed a high intelligence rating.

No daily attendance records were kept, but a small notebook was identified by Mrs. Turner, showing attendance records which she stated had been compiled a few days before the trial.

Some insight into the attitudes and habits of defendants was expressed by defendants' attorney in his argument to the Court at the conclusion of the case, in which he stated: "It must be as apparent to the Court as it is to me that my clients in this case are eccentric."

No California case involving this matter has ever been presented to any court on appeal. In addition to the briefs filed by defendant and the City Attorney, the Los Angeles County Counsel also filed an amicus curiae brief in support of the People.

Motion by defendant to dismiss on ground that facts stated in complaint did not constitute a public offense was denied.

Although there was a great deal of testimony with regard to the attitudes, living habits and educational philosophy of defendants, we are not concerned here with any of these or defendants' eccentricities. The sole question for determination is whether or not defendants qualify for exemption as provided for in Section 16624.

In reading the language of Section 16624 the conclusion in inescapable that the Legislature never intended that individual parents, by furnishing home instruction, could qualify as a private full-time day school. Each sentence and provision of this section clearly contemplates the commonly accepted conception of a regularly established private full-time day school. Even though parents possessed the qualifications required by the State of California for

teaching (which Mrs. Turner does not possess), such parents would not be eligible for exemption.

The statute specifically provides that such private full time day school ". . . shall offer instruction in the several branches of study required to be taught in the public schools of the State." The evidence in this case does not disclose that defendants ever provided such instruction.

The statute provides that "The attendance of the pupils shall be kept by private school authorities in a register, . . ." which clearly indicates that the Legislature was not referring to individual parents by the use of the word "authorities."

More persuasive, however, than any judicial dissertation on legislative intent, is the legislative history of this legislation.

The Compulsory School Attendance Law, as enacted in 1903 (Statutes 1903, Chapter 270, Section I, page 388), specifically provided for children being taught at home, under certain conditions. In 1919 when the Legislature amended the 1903 Statute to read almost identically with the present Education Code sections, with which we are concerned, it specifically omitted any reference to the former exemption of permitting children to be taught at home.

We need not conjecture as to the Legislature's reasons for excluding home teaching as an exemption, and it is well established that by deleting an express provision of a statute, the Legislature is presumed to have intended a substantial change in the law. (*People v. Valentine*, 28 Cal. 2d 121.)

It is likewise an established rule of law that when a statute is general in its terms, any exemption or exception from its operation must be specific (In Re Goddard, 24 Cal. App. 2d 132), and such exemption or exception must be included in all that the Legislature intended to except. (Rothschild v. Superior Court, 109 Cal. App. 345.)

In a case directly in point with this question, State v. Will, 99 Kan. 167, 160P, 1025 at 1026-1027, the court noted that a former statute had provided that a child might be

taught at home, as the California statute originally provided in 1903. The court said:

> "... In the later act, it will be observed that home instruction is no longer an excuse for nonattendance in school, ...
>
> "The argument for the appellant ... virtually asks the court to rewrite into the present statute language which the Legislature struck out when it revised the law in 1903 ... This we cannot do."

The state has a vital interest in the education of its youth. This is particularly true under a political system which depends for the preservation of its democratic institutions upon an intelligent citizenry. The State of California does not demand or force its citizens to send their children to the public schools, provided they furnish them with an education in private schools or by an accredited tutor, each of which must meet certain educational standards. To let each parent determine what his child should study or not study, as contended by defendants, would result in educational anarchy. There is already sufficient controversy throughout the United States as to the efficacy of certain teaching procedures by public and private school systems, and to permit each parent to establish teaching standards would result in confusion confounded.

It should not be overlooked that education also involves a good deal more than simply book learning, but involves an understanding and appreciation for desirable social relationships, the ability to associate and co-operate with others in joint enterprises, and an opportunity to offer and the ability to receive ideas. The legislative intent is clear by the express language of the statute, and the Court cannot, by judicial interpretation, rewrite the law to please the whim of an individual parent however sincere may be his motives.

There is no merit in defendants' contention that the complaint was fatally defective in that it contained no positive averments that defendants had failed to comply with the exceptions permitted by the statute.

It is well settled that an exception provided in the act and not a part of the description of the offense, need not be negatived in the complaint, but is a matter of defense. (People v. Macchiaroli, Cal. App. 2258; People v. Tilkin, 34 Cal. App. 2d 743.)

The defendants and each of them will be found guilty as charged.

Dated: February 25, 1953.

Roger Pfaff, Judge of the Municipal Court.

APPENDIX "C"

Applicable Sections of the Education Code of the State of California

Sections 16601, 16621, 16624 and 16625 of the Education Code of the State of California (Calif. Stats. 1943, ch. 71):

"Sec. 16601. *Child between ages of eight and 16: Sending to public full-time day school.* Each parent, guardian, or other person having control or charge of any child between the ages of eight and 16 years, not exempted under the provisions of this chapter, shall send the child to the public full-time day school for the full time for which the public schools of the city, city and county, or school district in which the child resides are in session."

"Sec. 16621. *Classes to be exempted from requirements.* The classes of children described in this article shall be exempted by the proper school authorities from the requirements of attendance upon a public full-time day school."

"Sec. 16624. *Children being instructed in private school: Requisites: Record of attendance.* Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the State. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or

more during each day that school is maintained during the year."

"Sec. 16625. *Children being instructed by private tutor: Credential: Hours of instruction.* Children not attending a private full-time day school, and who are being instructed in study and recitation for at least three hours a day for 170 days each calendar year by a private tutor or other person, in the several branches of study required to be taught in the public schools of this State and in the English language shall be exempted. The tutor or other person shall hold a valid State credential for the grade taught. The instruction shall be offered between the hours of 8 o'clock a.m. and 4 o'clock p.m."

California Administrative Code, Title 5, Education, Chapter 1, Subchapter 2:

Article 3. Kindergarten-Primary Credential

"226. *Application.* An applicant for the kindergarten-primary credential shall comply with the procedure prescribed for application (Section 201)* and shall have completed a program including the following minimum requirements:

(a) A four-year college course with a bachelor's degree.

(b) A minimum of twenty-four semester hours of professional work in education, affording adequate preparation for teaching the statutory school subjects required to be taught in the first three grades.[1] This work shall include:

(1) Eight semester hours of kindergarten-primary courses, including:

A. Six semester hours of course work in kindergarten, primary, or kindergarten-primary methods, curriculum, or principles, including a course covering each of the two levels.

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[1] Education Code Sections 10120 and 12130 refer to the statutory school subjects required to be taught in the elementary school.

B. Two semester hours of child psychology or child growth and development.

(2) Eight semester hours of directed teaching. At least one-half of this requirement shall be completed on the kindergarten-primary level. Successful teaching experience on the kindergarten-primary level in public schools or private schools of equivalent status may be substituted for the directed teaching at the rate of one year of full time teaching for one-half of the requirement.

(3) Other appropriate professional courses in education.

(c) The completion of a two semester hour course or the passing of an examination on the provisions and principles of the Constitution of the United States.[2] This provision may be met by either:

(1) Completing a course in any recognized college or university from which undergraduate credits are accepted by the State Board of Education, or

(2) Passing an examination given by a California junior college, college, or university." (Page 51)

"*Section 201 prescribes that the following materials must be sent to the Commission of Credentials by each applicant:

(a) a notarized application (Form No. 41-4 Rev.);

(b) a health certificate (Form No. 41-3) signed by a physician licensed by any state to practice medicine and surgery;

(c) a fee of $4.00 in the form of a money order or certified check;

(d) original letters verifying the last two years of teaching experience, if any;

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[2] An initial one year credential may be granted without the completion of the Constitution requirement, but may not be renewed, nor a second credential of the same kind granted, until this requirement has been completed."

(e) official transcripts of record listing all college and university courses completed.

"228. *Term.* The kindergarten-primary credential may be issued for a period of two years and may be renewed[1] for periods of five years upon the verification of either:

(a) Six semester hours of upper division or graduate work within the past five years, or

(b) A minimum of five months of successful school experience within the past five years.[2]" (Page 51)

Article 4. General Elementary Credential

"231. *Application.* An applicant for the general elementary credential shall comply with the procedure prescribed for application (Section 201)* and shall have completed a program including the following minimum requirements:

(a) A four-year college course with a bachelor's degree.

(b) A minimum of twenty-four semester hours of professional work in education, affording adequate preparation for teaching the statutory elementary school subjects and the subjects in which the applicant is required by law to be proficient.[1] This work shall include:

1. Eight semester hours of elementary education course, including:

"[1] Before the kindergarten-primary credential may be renewed, the applicant must verify the completion of at least a two semester hour course in audio-visual education completed in an accredited California teacher education institution or in an approved out-of-state institution.

[2] During the present national emergency declared by the President of the United States, an initial credential may be granted for a one year period without verification of recency of training or experience."

[1] Education Code Sections 10120 and 12130 refer to the statutory school subjects required to be taught in the elementary school and the subjects in which the applicant is required by law to be proficient.

A. Four semester hours of general elementary school methods or methods of teaching basic elementary school subjects.

B. Two semester hours in principles of elementary education or elementary school curriculum.

C. Two semester hours of child psychology, or child growth and development.

(2) Eight semester hours of directed teaching. At least one-half of this requirement shall be completed on the elementary level. Successful teaching experience on the elementary level in public schools or private schools of equivalent status may be substituted for directed teaching at the rate of one year of full-time teaching for one-half of the requirement.

(3) Other appropriate professional courses in education.

(c) An applicant who holds a regular general secondary credential may be granted a regular general elementary credential for a one-year period upon the completion of six semester hours in a course, or courses, in methods of teaching basic elementary school subjects, curriculum and directed teaching.

(d) The completion of a two semester hour course or the passing of an examination on the provisions and principles of the Constitution of the United States.[2] This provision may be met by either:

(1) Completing a course in any recognized college or university from which undergraduate credits are accepted by the State Board of Education, or

(2) Passing an examination given by a California junior college, college, or university." (Page 52)

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[2] An initial one year credential may be granted without the completion of the Constitution requirement, but may not be renewed, nor a second credential of the same kind granted, until this requirement has been completed."

"*Section 201 prescribes that the following materials must be sent to the Commission of Credentials by each applicant:

(a) A notarized application (Form No. 41-4 Rev.);
(b) A health certificate (Form No. 41-3) signed by a physician licensed by any state to practice medicine and surgery;
(c) A fee of $4.00 in the form of a money order or certified check;
(d) Original letters verifying the last two years of teaching experience, if any;
(e) Official transcripts of record listing all college and university courses completed.

In addition, duplicate personal identification cards must be submitted, unless acceptable cards have been previously submitted (Sections 200.1 and 617, effective September 22, 1951).

Article 5. Junior High School Credential

"236. *Application.* An applicant for the junior high school credential shall comply with the procedure prescribed for application (Section 201) and shall have completed a program including the following minimum requirements:

(a) A four year college course with a bachelor's degree.
(b) Eighteen semester hours of professional work in education including:

(1) A course dealing with the aims, scope and desirable outcomes of the elementary or secondary schools or both.
(2) Directed teaching, four semester hours.

(c) A major[1] and a minor[2] in subjects taught in high school, or a major in education and two minors in high school subjects.

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[1] "A major consists of not less than twenty-four semester hours of work.

[2] A minor consists of not less than twelve semester hours of work."

(d) The completion of a course or the passing of an examination on the provisions and principles of the Constitution of the United States as prescribed in Section 201(h)." (Page 52.1)

Article 6. General Secondary Credential

"241. *Application.* An applicant for the general secondary credential shall comply with the procedure prescribed for application (Section 201) * and shall have completed a program including the following minimum requirements:

(a) A four year college course with a bachelor's degree.

(b) One year of thirty semester hours of postgraduate work of upper division or graduate level or a year of postgraduate preparation which an accredited institution certifies as fulfilling institutional requirements for a postgraduate year of work. This work shall include:

(1) Six semester hours in professional education courses.

(2) Six semester hours in subject fields commonly taught in junior and senior high schools.

This postgraduate work shall be completed, following admission to graduate standing, in an institution or institutions accepted by the California State Department of Education to offer graduate work.

(c) Forty semester hours of general education with a minimum of six semester hours in each of the following four areas:

(1) Science and mathematics.

(2) The practical arts and the fine arts such as art, music, homemaking, health education, physical education, industrial arts, and similar fields.

(3) Social studies.

(4) The communicative arts such as languages, literature, speech arts, and similar fields.

Courses offered in fulfillment of the general education requirements may also be applied toward the fulfillment of major and minor requirements, provided the courses are within the same subject field as the major and minor.

(d) Twenty-two semester hours of professional work in education including the following areas:

(1) The scope and function of the secondary school.

(2) Growth and development; the learning process; mental hygiene or personality development.

(3) Counseling and guidance.

(4) Curriculum; methods; evaluation of instruction at the secondary level.

(5) Six semester hours of directed teaching. At least one-half of this requirement shall be completed by teaching any grade from seven through twelve. Successful teaching experience in public schools or in private schools of equivalent status may be substituted for directed teaching at the rate of one year of full-time teaching for one-half of the requirement.

(e) One major and one minor in teaching fields commonly taught in California senior or four year high schools, except as provided in section (7), or a major in a field not commonly taught and two minors in acceptable teaching fields. The minimum requirement for a major shall be thirty-six semester hours except as provided in section (10). Twelve semester hours of the work for the major shall be upper division or graduate work. The minimum requirement for a minor shall be twenty semester hours. Majors and minors in teaching fields shall be selected from the subject fields listed below except that additional majors and minors may be added by the Commission of Credentials.

(1) *Social studies.* United States history; three fields selected from geography, political science, economics, sociology, anthropology; and additional preparation in one or more of the social studies to complete the major.

(2) *Life sciences and general science.* Life science or biology; physics and chemistry or general physical science; and additional preparation in one or more of the life sciences to complete the major.

(3) *Physical science and general science.* Physics and

chemistry or general physical science; life science or biology; and additional preparation in one or more of the physical sciences to complete the major.

(4) *English.* Composition and literature; speech; dramatics or journalism; and additional preparation in composition and literature to complete the major.

(5) *Speech.* Composition and literature; speech; dramatics or journalism; and additional preparation in speech arts to complete the major.

(6) *Language arts.* Composition and literature; speech; dramatics; motion picture or radio; journalism; and additional preparation in one or more of these subjects to complete the major.

(7) *Foreign Language.* Latin or a modern foreign language including reading and, with the exception of Latin, speaking the language; and additional preparation in the same foreign language to complete the major. A minor may be completed in Latin or a modern foreign language.

(8) *Mathematics.* Basic or theoretical mathematics through integral calculus; and additional preparation in either basic or theoretical mathematics, or in courses dealing with mathematical applications, to complete the major.

(9) *Health education.* Personal health; school health; community health; and additional preparation in three fields selected from mental health, family life education, nutrition, safety education, human biology, and occupational hygiene to complete the major.

(10) *Special fields.* The major requirements for the general secondary credential in the special fields of agriculture, art, business education, physical education, homemaking, industrial arts, librarianship, music, speech arts are the same as the requirements for special secondary credentials in these fields.

The holder of a valid special secondary credential is considered as meeting the requirements for a major in that field for the general secondary credential.

(f) The completion of a two semester hour course or the passing of an examination on the provisions and principles

of the Constitution of the United States.[1] This provision may be met by either:

(1) Completing a course in any recognized college or university from which under graduate credits are accepted by the State Board of Education, or

(2) Passing an examination given by a California junior college, college, or university." (Page 52.1)

• "Section 201 prescribes that the following materials must be sent to the Commission of Credentials by each applicant:

(a) A notarized application (Form No. 41-4 rev.).

(b) A health certificate (Form No. 41-3) signed by a physician licensed by any state to practice medicine and surgery.

(c) A fee of $4.00 in the form of a money order or certified check.

(d) Original letters verifying the last two years of teaching experience, if any.

(e) Official transcripts of record listing all college and university courses completed.

Form No. 41-15, State of California, Department of Education, Division of State Colleges and Teacher Education, Credentials Office:

STATE OF CALIFORNIA

Department of Education, Division of State Colleges and Teacher Education, Credentials Office,
Sacramento 14.

The Great Seal of the State of California.

Roy E. Simpson, Superintendent of Public Instruction and Director of Education.

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[1] An initial one year credential may be granted without the completion of the Constitution requirement but may not be renewed, nor a second credential of the same kind granted, until this requirement has been completed."

Address: Credentials Office, State Dept. of Education, Sacramento 14, California.

Aubrey A. Douglass, Associate Superintendent; Chief, Division of State Colleges and Teacher Education.

James C. Stone, Consultant in Teacher Education.

Herschel S. Morgan, Credential Technician.

To: —— —— Date —— ——

In response to your recent communication may we ask you to accept this memorandum, particularly the paragraphs checked below, in place of a personal letter?

1. It is necessary to submit the following materials to complete an application for a California credential. Your application lacks the materials checked below:

a. Official application form (Form No. 41-4) completely filled out with affidavit and oath of allegiance properly subscribed. The official form is enclosed.

b. Official health examination form (Form No. 41-3) completely filled out by the applicant and a licensed physician and surgeon in any state and dated within six months of date of application. The official form is enclosed.

c. Legal fee of four dollars ($4.00) submitted in the form of money order or certified check.

d. Official transcripts of record of all college training. Transcripts must carry the original signature of an authorized official or bear the official seal of the issuing institution. Transcripts submitted will be returned.

e. Original letter by an authorized school official verifying your most recent teaching experience. The dates as well as the grade level of such experience should be included. (No official form is provided for verification of experience.) Confidential papers from placement bureaus will not be acceptable for verification of teaching experience unless dates and types of service are given.

2. Circulars outlining requirements for the credentials in which you are interested are enclosed. Credential requirements are the same in all districts of the State.

3. Between September 15 and June 15, *official* transcripts of record will be evaluated in terms of the requirement for a credential even though they are not accompanied by an application provided the applicant has completed the work for a degree.

4. Between June 15 and September 15, evaluations can be made *only* when complete application is filed.

5. Credentials or certificates issued by other states are not valid in California. This State has no reciprocal arrangement with any other state for the issuance of credentials. California credentials are not issued on examination.

6. There are no residence requirements for credential applicants in California. Work in a California teacher education institution is not required. Applicants may apply directly to the State Department of Education for credentials.

7. The requirements on the principles and provisions of the Constitution of the United States may be met by:

(a) completing a course in any recognized college or university.

(b) passing an examination given by a California junior college, college or university, or

(c) FOR PROVISIONAL CREDENTIALS ONLY —passing an examination given through the office of a California county superintendent of schools.

The initial credential can be granted for a one year period without meeting this requirement. The requirement must be met before such a credential can be renewed or a new credential of the same type can be issued.

8. A two semester hour course in audio-visual education taken in an approved institution in any state is required for renewal of the following credentials if issued on or after May 1, 1948; Kindergarten-Primary, General Elementary, Provisional General Elementary, Junior High School, General Secondary and Junior College.

9. A maximum of six semester hours of correspondence work may be accepted toward credential requirements.

10. Credit earned in extension classes is accepted on the same basis as resident credit.

11. There is no state law concerning the employment of married women in the public schools of California.

12. The minimum legal salary for teachers in this State is twenty-four hundred dollars ($2400) a year. There is no state salary schedule. ($3000 after 7/1/52 for regularly credentialed teachers.)

13. Possession of a regular valid teaching credential is prerequisite to the issuance of any of the following credentials: Administration, Supervision, Child Welfare and Supervision of Attendance, Correction of Speech Defects, Teaching Lip Reading to the Hard-of-Hearing Child, School Psychologist and Teaching the Mentally Retarded.

14. Substitute teaching requires the same type of credential as regular teaching.

15. Credentials are not required for teaching in four year colleges or universities, nor for teaching in private elementary and secondary schools.

16. The minimum legal age for a teacher is eighteen years. There is no maximum age.

17. The State Department of Education does not maintain a placement bureau. Inquiries about positions or other information concerning California schools may be obtained from city and county superintendents of schools. A directory is enclosed.

18. There is no provision for credentials authorizing such services as dean, counselor or educational research specialist.

19. A list of colleges and universities in California accredited for teacher education is enclosed. All inquiries about summer sessions, degrees, courses, fees, standards and other questions concerning individual institutions should be sent directly to the institution.

20. Information on teacher retirement may be obtained from the Teachers Retirement System, 1408 J Street, Sacramento 14, California.

21. The latest available bulletin on the California teacher tenure law may be obtained from the California Teachers Association, 391 Sutter Street, San Francisco 8.

22. The California State Department of Education may

not grant a credential to a non-citizen unless he holds first papers of citizenship.

23. An applicant for a credential is required to submit one set (2 cards) of personal identification (fingerprint) cards. These cards may be secured from any law enforcement agency (local police department or county sheriff's office), the office of a California county superintendent of schools, or the Credentials Office of the State Department of Education.

J. BURTON VASCHE,
By O. M. GERGEN,
Credentials Secretary.

Dept. of Education: Credentials Office, Form No. 41-15. 47417 7-51 15M SPC".

33

Office - Supreme Court, U. S.
FILED
MAR 25 1954
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 655

WILLIAM TURNER AND MARY TURNER, *Appellants,*

vs.

PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, CALIFORNIA

STATEMENT OPPOSING JURISDICTION

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
PHILIP E. GREY,
Deputy City Attorney,
Counsel for Appellee.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, APPELLATE DEPARTMENT

CR A 3026

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellee,
vs.
WILLIAM TURNER AND MARY TURNER, *Defendants and Appellants.*

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court, as follows:

I

There is involved no substantial Federal question which has not been settled by previous decision of this Court.

This appeal involves the alleged right of parents to themselves educate their children by home instruction, in defiance of the state compulsory education laws. Appellants contend they have an inherent right to themselves give their children home instruction and that the California statutes,

Sections 16601, 16621 and 16625, Education Code, which require parents of a child between the age of eight and sixteen years to send such child to full-time public school or have him instructed in a private full-time day school, or instructed by a private tutor or other person holding a valid state credential to teach the grade taught, is unconstitutional as applied to them.

Statutes making the education of children compulsory have become very general in the United States and their constitutionality is beyond dispute. The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state. One of the most important natural duties of the parent is the obligation to educate his child. This duty he owes not only to the child but to the commonwealth.

In the case of *Pierce* v. *Society of Sisters*, 268 U. S. 510, this court stated:

> "No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers, and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, and that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

In *Myer* v. *Nebraska*, 262 U. S. 390, this court stated:

> "The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned."

In *Prince* v. *Commonwealth of Massachusetts*, 321 U. S. 158, 166, this court stated:

> "And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. * * * It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes to some extent matters of conscience and religious conviction."

As shown by appellants in their "Statement" of the Statement As To Jurisdiction, they are the parents of seven children, three of whom are of school age and none of whom is attending public school or private school or is being taught by a tutor or other person holding state credential to teach.

Appellants sought to convince the trial court they were exempted from complying with the statute by reason of the home instruction given by them. The trial court found that they did not qualify as a tutor or other person holding a state credential to teach. (Memorandum Opinion, Appendix "B" of Statement As To Jurisdiction.)

No Federal question was presented to or passed upon by the trial court in so finding. The decision thus rendered was based on a question of fact based upon the evidence presented.

II

Sections 16601, 16621, 16624 and 16625 of the Education Code are not in conflict with the Federal Constitution or with any amendment thereto.

The legitimate interest of the State in the welfare and education of its children is universally recognized. There

is nothing which contributes more to the development of the highest type of citizenship than the intelligence, training, and character-building which are the products of our schools. It is recognized by the authorities heretofore cited that to accomplish this end the State may resort to what is generally referred to as compulsory education or school attendance of children.

In order to impart an education to a child, it is self-evident that the instructor must himself have adequate learning and training in the art of teaching. An illiterate parent cannot properly educate his child nor can he, by attempting to do so, avoid his obligation to send the child to school. The question of a parent's qualifications to give a child the proper instruction should be determined by competent agencies of the State upon whom the duty and responsibility of supervising the maintenance of a proper educational standard is placed.

This court has stated that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose.

Everson v. *Board of Education*, 330 U. S. 1, 18

The statutes here involved do not require that children of school age be sent only to public schools. The statutes recognize the right of a parent to send his children to a public school, to have them educated in a private school or by a private tutor or other person possessing certain specified qualifications. Thus there is no denial of any alleged constitutional right nor any infringement of the due process clause of the Federal Constitution.

No arbitrary or unreasonable interference is found in the statutes which would tend to deprive a parent of an inherent right or duty. The provisions of the statutes

apply equally to all parents having under their control children of school age.

Many state courts have upheld statutes which are in substance similar to the ones here involved. In the case of *State* v. *Bailey*, 157 Ind. 324, 61 N. E. 730, the court stated:

> "Statutes making it compulsory upon the parent, guardian or other person having custody and control of children to send them to public or private schools for longer or shorter periods during certain years of the life of such children have not only been upheld as strictly within the constitutional power of the legislature, but have generally been regarded as necessary to carry out the express purpose of the Constitution itself."

In *State* v. *Hoyt*, 84 N. H. 38, 146 A. 170, the statute was held to be valid which required all children to attend either a public school or an approved private school. No other alternative was there allowed.

In *State* v. *Williams*, 56 S. D. 370, 228 N. W. 470, the statute was held to be valid. It required attendance at public schools or completion of an equivalent course in private schools or instruction otherwise by a competent person for a like period of time in branches commonly taught in public schools.

In *Knox* v. *O'Brien*, 7 N. J. Super. 608, 72 A. (2d) 389, the statute required public school attendance or equivalent instruction during the same days and hours as at public schools, at a private school, or by receipt of equivalent instruction elsewhere. The court stated in its opinion:

> "The right of a sovereign state to direct the paths of its children to seek education for enlightenment and literacy, so as to enjoy full and complete life, is so fundamental as to relieve the need for judicial citation. * * * A democracy would fail to meet the challenge

> if it were not to approve the right of the state to adopt legislation having for its ends standards of education which may forever destroy illiteracy, and to clothe its youthful citizens with academic attainments wherewith to enjoy the high cultural and secular heights thus far reached."

The principle that a state may require attendance at some school, either public or private, and is not required to provide any other alternative, has been set forth in the following cases, which also support the proposition that the fact that instruction by parents at home is not allowed, does not invalidate such statute:

State v. *Hoyt*, supra
State v. *Will*, 99 Kan. 167, 160 Pac. 1025
State v. *Counort*, 69 Wash. 361, 124 Pac. 910

This Court has stated that it is much too late to argue that legislation intended to facilitate the opportunity of children to get an education serves no public purpose.

Everson v. *Board of Education*, supra.

Appellants contend that the statutes here involved as applied to them deny due process of law guaranteed under the Constitution. This is based upon their claim that they have the right to give home instruction to their children. In furtherance of this contention they were permitted to show the manner of their home instruction.

As stated by Mr. Justice Cardoza in his concurring opinion in *Hamilton* v. *Regents of the University of California*, 293 U. S. 245, at page 268:

> "The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of the government. One who is a martyr to a principle—which may turn out in the end to be a

> delusion or an error—does not prove by his martyrdom that he has kept within the law."

In *Rice* v. *Commonwealth*, 188 Va. 224, 49 S. E. (2d) 342, it was stated that the fact that parents interpret the Bible as commanding them to teach and train their children in the ways of life does not excuse them from compliance with a statute requiring parents to send their children to school or have them taught by a tutor or teacher having qualifications prescribed by the State Board of Education, and render enforcement of its penalties against them a violation of their right under the Fourteenth Amendment to religious freedom. The court there stated:

> "The constitutional protection of religious freedom, while it insures religious equality, on the other hand does not provide immunity from compliance with reasonable civil requirements imposed by the State. The individual cannot be permitted, on religious grounds, to be the judge of his duty to obey the regulatory laws enacted by the State in the interests of the public welfare. The mere fact that such a claim of immunity is asserted because of religious convictions is not sufficient to establish its constitutional validity."

It was also held in the *Rice* case supra, that the adequacy of instruction otherwise given was immaterial in the prosecution for non-compliance with such a statute.

Appellants here do not seek to justify their refusal to send their children to school because of religious belief or because the statute fails to give them a choice of schools, but contend that the type of home instruction they have given to their children is adequate and equal to that provided in the public schools.

The contention that instruction in the home is instruction in a "private school" has been rejected in several

cases, either because of the difficulty of governmental supervision or for the reason that the place of instruction must be a duly organized and existing educational institution.

State v. *Counort,* supra, (69 Wash. 361, 124 P. 910)
State v. *Hoyt,* supra, (84 N. H. 38, 146 A. 170)
State v. *Will,* supra, (99 Kan. 167, 160 P. 1025)

Claims based merely upon "assumed potential invasions" of rights are not enough to warrant judicial intervention.

Ashwander v. *Tennessee Valley Authority,* 297 U. S. 288

Nowhere have appellants cited any authority which fully supports their claim of inherent right to give home instruction by parents themselves who do not hold valid teaching credentials and where such claim of right is based solely upon the parents' wish to be the educators of their children.

III

Appellants are not within the exempt class and in no position to contend that the statute is discriminatory.

It is a general rule that, even though a person may come within the main purpose of a statute, he has no standing to raise constitutional questions which do not directly affect him, hence a litigant can be heard to question the validity of a statute only when, and insofar as, it is applied to his disadvantage.

Buchannon v. *Warley,* 245 U. S. 60
Smiley v. *Kansas,* 196 U. S. 447

No one can obtain a decision as to the validity of a law on the ground that it impairs the rights of others, for one attacking the constitutionality of a statute is not the champion of any rights except his own.

Bourjois v. *Chapman,* 301 U. S. 183
Heneford v. *Silas Mason Co.,* 300 U. S. 577

Appellants are also contending that the exemptions set forth in Sections 16624 and 16625 of the Education Code as applied to private schools and to tutors is unconstitutional and discriminatory. Appellants have not shown that they come within either classification. They are not a full-time private school nor a tutor or other person holding a valid State credential for the grade taught.

As to their chief attack, that they have an inherent, commonlaw and God-given duty and right to give their children the benefit of their own manner of teaching, the exceptions have no application and appellants are in no position to raise this question. The rules, regulations and standards required for State credentials can have no possible affect on appellants. No showing was made that they possessed the required training; they were in fact refused credentials. If appellants should contend that they possess the necessary qualifications to be entitled to State credentials, their remedy, of course, is by way of an action for writ of mandate and not by appeal from a judgment of conviction.

IV

The decision of the appellate department of the Superior Court was in accordance with decisions of this Court.

The decision of the Appellate Department of the Superior Court of the County of Los Angeles (Appendix "A", Statement As To Jurisdiction) held, that the statutes here involved were unlike the statutes condemned in *Pierce* v. *Society of Sisters*, supra, (268 U. S. 510) which forced a child to accept instruction only by public teachers. The Appellate Court held that these statutes recognized the right of parents not to place their children in public schools and that the requirement that full-time private schools or tutors or other persons possessing qualifications prescribed, is reasonable and within the constitutional authority of the legis-

lature. The decision follows and is in accord with the principles set forth in the opinions of this court found in *Pierce* v. *Society of Sisters*, supra; *Myers v. Nebraska*, supra, and *Prince* v. *Commonwealth*, supra.

It appears to appellee, the People of the State of California, that no substantial question is presented by the record of this case; that the appeal should be dismissed or the judgment of the State court should be affirmed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

DONALD M. REDWINE,
Assistant City Attorney,

PHILIP E. GREY,
Deputy City Attorney,
Counsel for Appellee.

(4510)

Filed

No. 655. TURNER ET AL. *v.* CALIFORNIA. Appeal from the Superior Court of California, Appellate Department, County of Los Angeles. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. MR. JUSTICE BLACK and MR. JUSTICE REED are of the opinion probable jurisdiction should be noted. *James C. Ingebretsen* for appellants. *Roger Arnebergh* and *Philip E. Grey* for appellee. Reported below: 121 Cal. App. 2d 861, 263 P. 2d 685.